

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JAMES MOORE,)
)
Petitioner,)
)
vs.) Case No. CIV-04-1735-F
)
HASKELL HIGGINS, JR., WARDEN,)
)
Respondent.)

ORDER

In this action, petitioner, a state court prisoner appearing pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Magistrate Judge Valerie K. Couch filed her Report and Recommendation on July 20, 2005 (Report at docket entry no. 15), recommending that the petition be denied and that petitioner's First Amendment claim challenging the conditions of his confinement be dismissed without prejudice.

Petitioner's filings are liberally construed. On July 27, 2005, petitioner filed a "Motion for Leave to Supplement the Record." (Docket entry no. 16.) On August 10, 2005, petitioner filed an "Objection to Magistrate Judge Valerie K. Couch's Report and Recommendation and Request to Grant Petitioner's Motion for Leave to Supplement the Record." (Docket entry no. 17.) Petitioner's objections included a copy of petitioner's Motion for Leave to Supplement the Record, the same motion which petitioner had previously filed as docket entry no. 16. As the Motion for Leave to Supplement forms a part of petitioner's basis for objecting to the Magistrate Judge's Report, the court has fully considered the material arguments¹ included in the

¹The court does not believe the motion to supplement or the objections contain any new issues presented for the first time at this stage; however, to the extent that either of these filings might be construed otherwise, any such new issues are deemed waived. *See, Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived"); *Tracy v. Addison*, 16 Fed. Appx. 928, 2001 WL (continued...)

Motion to Supplement during the course of its review of petitioner's objections to the Report. Thus, the relief requested in the Motion to Supplement has, as a practical matter, already been granted, and petitioner's Motion for Leave to Supplement, filed at docket entry no. 16 is therefore **STRICKEN** as moot.

Petitioner has timely objected to the Report and Recommendation of the Magistrate Judge. Construing petitioner's objections broadly, the court has reviewed all matters covered in the Report, *de novo*. After careful study of petitioner's objections, the Report, the record, and the relevant legal authorities, the court concurs with the Magistrate Judge's determinations as stated in the Report and finds that no purpose would be served by stating any additional analysis here.

Accordingly, the Report and Recommendation of Magistrate Judge Valerie K. Couch of July 20, 2005 is hereby **ACCEPTED**, **ADOPTED**, and **AFFIRMED** in its entirety. The petition for writ of habeas corpus is **DENIED**, and petitioner's First Amendment claim challenging the conditions of his confinement is **DISMISSED** without prejudice.

Dated this 11th day of August, 2005.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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¹(...continued)
901142 (10th Cir. 2001) (unpublished habeas case, cited here pursuant to Tenth Circuit Rule 36.3, in which issue raised for the first time in objection to magistrate judge's report was deemed waived).